

## REMARKS

### Amendments

It is clear from applicants' specification that athletic performance is a pursuit in which a person is active. Claim 1 has been amended to further define athletic performance as an activity which increases pulse over baseline. Support for claim 1 and new claim 19 can be found throughout the specification and on page 12, line 12, for example.

Furthermore, it is abundantly clear from the specification as a whole that the ordinary meaning of "improving athletic performance" does not encompass recovering from an illness (e.g., suffering from asthma).

### The Delmore et al (EP 1,033,118) Rejection under 35 U.S.C. §102 and §103

The rejections under 35 U.S.C. §102 and §103 are respectfully traversed.

Delmore does not show or suggest the use of peppermint to improve athletic performance. He suggests use of nasal dilators for improved athletic performance but the claims herein require more - use of peppermint for this purpose. Delmore merely states that nasal dilators very generally can be formulated to contain peppermint, but in no way does the reference ever suggest peppermint is effective in improving athletic performance. (Only use of the dilators is disclosed as having this effect.) Peppermint, like many other medications generically disclosed in col. 7, can be added to the dilator of Delmore "to provide benefit to the user when inhaled". Such a possible selection and general description does not anticipate the methods claimed herein. The Delmore reference provides no specific embodiment or specific evidence to suggest a method of enhancing athletic performance meeting the recitations of claim 1. A mere broad generic disclosure without any specific direction as to the specific element necessary to provide anticipation is not an anticipatory disclosure. In other words, such a broad generic disclosure does not "describe" an embodiment therein in accordance with 35 U.S.C. §102 (See *In re Kollman et al*, 201 USPQ 193 (CCPA 1979) and it does not render the claims obvious either since no motivation to use peppermint for the purpose of the claims is given.

Thus, the 35 U.S.C. §102 and §103 rejections should be withdrawn.

The Weil (DE 3931150) Rejection under 35 U.S.C. §102

The rejection of claims 1-10, 12, 13, 15 and 16 under 35 U.S.C. §102 as being anticipated by Weil (DE 3931150), is respectfully traversed.

DE 3931150 teaches a perfume composition that contains lemon oil and peppermint oil. The composition may further contain basil oil and clove oil. Among other uses, it is stated that the perfume composition is used to overcome mental and bodily fatigue. Thus, the reference is irrelevant to athletic performance. This is further clear from the abstract, which describes use of the perfume composition in trains, cars, unventilated offices and building sites. These sites are not venues for normal athletic performance. The recovery from bodily fatigue Weil is making reference to bears no relationship to improving athletic performance.

All other rejections should be withdrawn at least for the foregoing reasons.

The Rejections under 35 U.S.C. §103

Xiao relates to a tea made from a mixture of medicinal materials. Peppermint leaf is just one of ten components listed. The reference attributes many positive effects from drinking the tea, including resisting fatigue, but nothing correlates this claim to peppermint. In any event, this effect is not the improvement of athletic performance. The reference provides no mention of enhancing athletic performance by exposure to peppermint odorant to arrive at the method of applicant's invention. There is no motivation or suggestion in Delmore, Weil or Xiao to use peppermint odorant to enhance athletic performance.

The rejection of claim 14 under 35 U.S.C. §103 as being unpatentable over Weil (DE 3931150) in view of Cronk et al (US 5,706,800) is respectfully traversed.

Cronk et al. teaches the use of a medicated menthol nasal dilator for increasing breathing. Menthol, camphor, lavender and/or peppermint oil are listed as possible aromatic medications disposed on the dilator. As stated above for Delmore, use of a mechanical means of increasing breathing (with possible decongestant substances disposed on the surface) is not same as enhancing athletic performance through the use of peppermint odorant. Neither Delmore, Cronk nor Weil suggest or teach the use of peppermint odorant to enhance athletic performance.

The rejection of claim 17 under 35 U.S.C. §103 as being unpatentable over

Delmore or Weil (DE 3931150) in view of Stephens (The horse scents guide to good health, 2000) is respectfully traversed.

On page 7 of the Office Action the Examiner states that "...Stephens teaches the smell excites the horse, similar to Applicants use of "intensity" on lines 6-7 of page 2." Excitement refers to arousal or stimulation whereas intensity refers to a degree of effort, concentration or force. Exciting a horse through the use of aromatherapy agents in order to alleviate physical and emotional problems is not related to enhancement of athletic performance. The reference suggests that rubbing peppermint oil down a horse's neck and chest can help it get over trauma, relieve lung problems, arthritis and lameness and counter emotional and behavioral problems. Alleviating physical and emotional problems implies a pathological state. The present claims relate to something different, enhancement of normal athletic performance through exposure to peppermint odorant.

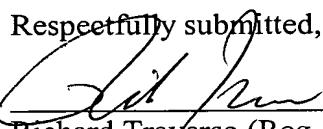
Neither Delmore, Weil nor the Stephens reference provide any hint or guidance that peppermint odorant can be used to increase athletic performance.

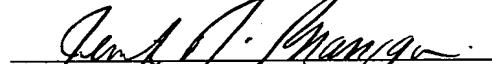
It is submitted that the claims are in condition for allowance.

The Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Should the Examiner have any questions or comments, he is invited to telephone the undersigned at the number below.

Respectfully submitted,

  
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**VERSION WITH MARKINGS TO SHOW CHANGES MADE**

1. A method of improving athletic performance of a mammal comprising administering to said mammal an olfactory stimulating amount of peppermint odorant, said amount being sufficient for improving said mammal's normal athletic performance and wherein said athletic performance is an activity that increases pulse over baseline.